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EXPRESS MAIL LABEL NO. . EV565665516US

PATENT APPLICATION
Docket No. 15268.1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:		)
	Gast et al.	)
Serial No.	09/646,767	) Art Unit 3641
Confirmation No.	7760	)
Filed:	November 30, 2000	)
For:	PROPELLANTS FOR GAS GENERATOR	)
Examiner:	Aileen Baker Felton	)

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

I hereby certify that following documents are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated below in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Date of deposit: January 27, 2005.

- Appeal Brief (in triplicate)
- Claim Appendix (in triplicate)
- Transmittal Letter
- Postcard

Respectfully submitted,

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Docket No. 15268.1

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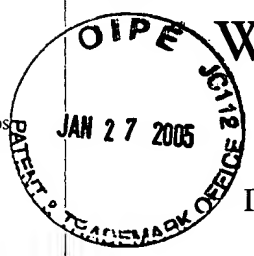

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In re application of	Gast et al.	)
Serial No.	09/646,767	)Art Unit
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For:	PROPELLANTS FOR GAS GENERATOR	)
Examiner:	Aileen Baker Felton	)

Mail Stop APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith are the following for entry in the above-identified application:

- Replacement Appeal Brief of Appellants and Claim Appendix (each in triplicate) in response to the Notification of Non-Compliance. No additional fee is required.

X The Commissioner is hereby authorized to charge payment of any other fees associated with this communication or credit any overpayment to Deposit Account No. 23-3178. Duplicate copies of this sheet are attached.

Dated this 27th day of January 2005.

Respectfully submitted,

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EXPRESS MAIL LABEL NO. EV565665516US

PATENT APPLICATION
Docket No. 15268.1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

In re application of		)
	Gast et al.	)
Serial No	09/646,767	) Art Unit) 3641
Confirmation No.	7760	)
Filed	November 30, 2000	)
For	PROPELLANTS FOR GAS GENERATOR	)
Examiner	Aileen Baker Felton	)
Customer No.:	022913	)

APPEAL BRIEF OF APPELLANTS

Mail Stop Appeal Briefs - Patent
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellants Eduard Gast, Bernhard Schmid, and Peter Semmler, previously filed a timely Notice of Appeal from the action of the Primary Examiner in finally rejecting all of the claims in this application. This Appeal Brief is being filed under the provisions of 35 U.S.C. § 134(a) and 37 C.F.R. § 41.37.

REAL PARTY IN INTEREST

NIGU Chemie GmbH is the real party in interest, as evidenced by the front page of International Application Publication WO 99/48843, of which the current application is a national phase application filed under 35 U.S.C. § 371.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

Pending claims: 1-23.

Rejected claims: 1-4 and 9-22.

Allowed claims: 23.

Claims objected to: 5-8.

Appealed claims: 1-4 and 9-22.

STATUS OF AMENDMENTS

Amendment "D" and Response After Final Rejection under 37 C.F.R. § 1.116, filed March 16, 2004, has not been entered according to the Advisory Action dated April 1, 2004.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The subject matter of appealed claims 1-4 and 9-22 is directed to propellants for gas generators used in deploying safety air bags in automobiles. Application, p. 1, *ll.* 1-6. The propellants comprise (a) at least one fuel, (b) at least one oxidizing agent, and (c) at least one slag trap comprising metal oxide particles formed by a gas phase reaction and that have a specific surface area of at least about 40 m^2/g. *Id.*, p. 7, *l.* 19 – p. 6; p. 9, *ll.* 11-23. Such "metal oxides have no pores and no defined agglomerates as is usually the case in the preparation by a wet process." *Id.*, p. 9, *ll.* 23-25. "[T]he slap traps according to the present invention do not take part in chemical reactions during the burn-up reaction of the propelling charges for gas

generators or do take part only to a small degree on the surface of the metal oxides used as a slag trap." *Id.*, p. 10, *ll.* 16-21.

Claims 9 and 22 further claim slag trap particles that are "highly dispersed", which is a literal translation of the German term "hochdispers" – "a term of art that refers to very particular properties of the metal oxides referred to in the literature with respect to particle structure and particle size and wherein the 'highly dispersed' metal oxides are prepared according to a specific process, *i.e.*, flame hydrolysis." Preliminary Amendment, p. 2, *ll.* 6-10 (part of paragraph inserted at p. 9, *l.* 21 of Application). "Metal oxides prepared according to processes such as a wet process are not in 'highly dispersed' form." *Id.*, p. 2, *ll.* 10-11. Metal oxides such as Al_2O_3, TiO_2 or ZrO_2 in highly dispersed form have "highly resolved lattices" (*i.e.*, a "large inner surface") and cause "cooling of the burn-up products due to their inactivity" and also result in the take-up of liquid or solid slag portions and particles developed during burn-up. Application, p. 10, *ll.* 21-27.

In general, the slag trap particles cause the propellant composition to remain in "tablet form" during or after combustion or as "fragments and pieces" that "can be easily filtered". *Id.*, p. 10, *ll.* 27-29. This eliminates virtually all dust that might otherwise be formed by the burning composition. *Id.*, p. 10, *ll.* 29-32. In this way, the slag trap particles act "as an internal filter" and "substantially prevent the formation and exit of dust-type slag portions from the housing of the gas generator." *Id.*, p. 11, *ll.* 1-4. The slag trap particles result in "an essential simplification of the filter of the housing of the gas generator". *Id.*, p. 11, *ll.* 4-6. As a result, "additional (mechanical) fine filters in the housing of the gas generator are in part not necessary". *Id.*, p.11, *ll.* 6-8. This reduces the weight of the airbag gas generator. *Id.*, p.11, *ll.* 8-9. Use of the slag trap particles minimizes dust-type particles that can exit the gas generator and enter a person's lungs. *Id.*, p.11, *ll.* 10-14.

the burn-up reaction of the propelling charges for gas generators or do take part only to a small degree on the surface of the metal oxides used as a slag trap." *Id.*, p. 10, *ll.* 16-21.

Claims 9 and 22 further claim slag trap particles that are "highly dispersed", which is a literal translation of the German term "hochdispers" – "a term of art that refers to very particular properties of the metal oxides referred to in the literature with respect to particle structure and particle size and wherein the 'highly dispersed' metal oxides are prepared according to a specific process, *i.e.*, flame hydrolysis." Preliminary Amendment, p. 2, *ll.* 6-10 (part of paragraph inserted at p. 9, *l.* 21 of Application). "Metal oxides prepared according to processes such as a wet process are not in 'highly dispersed' form." *Id.*, p. 2, *ll.* 10-11. Metal oxides such as Al_2O_3, TiO_2 or ZrO_2 in highly dispersed form have "highly resolved lattices" (*i.e.*, a "large inner surface") and cause "cooling of the burn-up products due to their inactivity" and also result in the take-up of liquid or solid slag portions and particles developed during burn-up. Application, p. 10, *ll.* 21-27.

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GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-4 and 9-22 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,149,745 to *Matsuda* et al. ("*Matsuda*") in view of U.S. Patent No. 5,827,996 to *Yoshida* et al. ("*Yoshida*").

2. Claims 1-4 and 9-22 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,190,474 to *Yamato* ("*Yamato*") in view of *Yoshida*.

ARGUMENT

I. SUMMARY OF OFFICE ACTIONS

A. Office Action Dated January 16, 2004

The Office Action of January 16, 2004 ("Office Action") finally rejected claims 1-4 and 9-22 under 35 U.S.C. § 103(a) as being unpatentable over *Matsuda* in view of *Yoshida*. The Office Action also finally rejected claims 1-4 and 9-22 under 35 U.S.C. § 103(a) as being unpatentable over *Yamato* in view of *Yoshida*. Because neither *Matsuda* nor *Yamato* ("primary references") teach or suggest every limitation recited in the claims, the Office Action combined these two admittedly deficient references with *Yoshida* ("secondary reference") in an effort to show that the claims are obvious over the combination.

More specifically, this and previous office actions have acknowledged that, among other things, neither *Matsuda* nor *Yamato* teach or suggest the use of the claimed slag trap particles in a propellant for gas generators. For this reason, the Office Action combined the primary references with *Yoshida* which, although silent with respect to trapping slag, discloses a burn catalyst that the Office Action contends constitutes the claimed slag trap particles.

B. Advisory Action Dated April 1, 2004

Amendment "D" and Response was filed March 16, 2004 in response to the Office Action and as a follow up to an Examiner Interview held the same day. This amendment did not

amend any claims but showed why the Office Action failed to make out a *prima facie* case of obviousness. Though no claims were amended, the Examiner refused entry of the amendment on the grounds that the arguments "present new issues and are not persuasive". Advisory Action. The Advisory Action failed to rebut any of the arguments set forth in Amendment "D" and Response.

II. INCORPORATION OF PREVIOUS ARGUMENTS

Appellants incorporate by reference the arguments in support of patentability set forth in Amendment "D" and Response in their entirety. To the extent they still apply, Appellants also incorporate the arguments set forth in Amendment "C" and Response filed November 6, 2003.

III. ARGUMENT IN SUPPORT OF CLAIM GROUPINGS AND THE SEPARATE PATENTABILITY OF CLAIMS 9 AND 22 APART FROM THE ARGUMENTS THAT APPLY TO THE CLAIMS GENERALLY

Claims 1-4 and 10-21 stand or fall together because they claim a propellant composition comprising at least one fuel and at least one oxidizing agent in combination with "at least one essentially chemically-inert slag trap" composed of metal oxide "particles formed by a gas phase reaction" and that "have a specific surface area of at least about 40 m^2/g."

Claims 9 and 22 stand or fall together because they further require the claimed metal oxide slag trap particles to be "highly dispersed". The recitation of the term "highly dispersed" creates an additional evidentiary burden that was not met by the PTO when rejecting claims 9 and 22. The argument in this section constitutes a separate argument of patentability relative to claims 9 and 22 in addition to any other arguments set forth below that separately argue the patentability of claims 9 and 22 apart from the patentability of claims 1-4 and 10-21.

IV. THE OFFICE ACTION FAILS TO STATE A PRIMA FACIA CASE OF OBVIOUSNESS RELATIVE TO CLAIMS 1-4 AND 9-22 BASED ON THE COMBINATIONS OF *MATSUDA* AND *YOSHIDA* AND *YAMATO* AND *YOSHIDA*

The Office Action fails to state a *prima facie* case of obviousness over the cited art because it (1) fails to show any valid motivation in the prior art to combine the references, (2) fails to show where the combined teachings of the applied art teach or suggest every limitation recited in the claims, and (3) fails to show any reasonable expectation of success based on the prior art. *See* MPEP § 2143. Failure to establish any one of the three requirements set forth in MPEP § 2143 is fatal to a rejection. In this case, the Office Action fails to show any.

A. The Office Action Fails to Articulate any Valid Motivation for Combining the Applied Art

1. *The Alleged Motivation for Combining Matsuda and Yoshida is Based on Mischaracterizations and Unsupported Assumptions Regarding the Teachings Found Therein*

The Office Action alleges the following motivation for combining *Matsuda* with *Yoshida*:

> It would have been obvious to use the titanium dioxide taught by *Yoshida* et al with the composition of *Matsuda* since *Yoshida* suggests that it will function to reduce the concentrations of CO and NOx and this is the purpose of the titanium oxide fiber disclosed in *Matsuda*.

Office Action, page 3 (emphasis added).

There are at least two errors contained in the foregoing statement: (1) reducing the concentration of CO and NOx is not taught in *Matsuda*; and (2) *Matsuda* does not teach or suggest the use of titanium oxide fiber. In addition, Appellants learned during the Examiner Interview that the Examiner believes (albeit erroneously) that the catalysis function disclosed in *Yoshida* is inherently the same as the "scavenging" function disclosed in *Matsuda* (*i.e.*, the Examiner feigned to see no meaningful differences between "catalyzing" the reduction of CO and NOx during combustion and "scavenging" slag formed as a result of combustion).

First, *Matsuda* neither teaches nor suggests anything with respect to reducing the concentration of CO and NOx. *Matsuda* discloses "a gas generant composition containing a fuel comprising a metal azide or an organic compound, an oxidizing agent, and at least one additive selected from a ceramic whisker or fiber." Col. 2, lines 15-18. Previous office actions identified the "ceramic whisker or fiber" as being similar to the slag trap particles of the present invention. While *Matsuda* suggests that the ceramic whisker or fiber provides "a scavenging effect of a solid residue" there is no teaching or suggestion that they "will function to reduce the concentrations of CO and NOx" as alleged in the Office Action. See *Matsuda*, col. 2, lines 50-65; Office Action, page 3. Moreover, *Yoshida* does not teach that the burning catalyst actually interacts with CO and NOx, only that it "decrease[s] the burning temperature" so as to "reduce the concentration of CO and NOx". *Yoshida*, col. 5, lines 24-26. In contrast, the "scavenging effect" of the ceramic whisker or fiber in *Matsuda* obviously requires a direct interaction with whatever is being scavenged.

Second, *Matsuda* neither teaches nor suggests the use of "titanium dioxide fiber". See *Matsuda*, col. 2, lines 50-65 (which only discloses "whiskers or fibers selected from aluminum borate, potassium titanate, alumina, aluminum silicate, zirconium oxide, and zinc oxide"). When confronted with this error during the Examiner Interview, the Examiner represented that she meant to say that *Matsuda* teaches the use of "zirconium oxide" fibers rather than "titanium dioxide" fibers and admitted that the Office Action contains a typographical error. Aside from the fact that the Examiner never attempted to correct this admitted typographical error (*i.e.*, no supplemental office action was ever sent), this new argument is equally off-base because *Yoshida* does not teach or suggests the use of zirconium oxide particles. According to *Yoshida*,

> Specific examples of the oxides of metals of the 4 to 6 periods in the periodic table are copper oxide, nickel oxide, cobalt oxide, iron oxide, chromium oxide, manganese oxide, zinc oxide, calcium oxide, titanium oxide, vanadium oxide, cerium

> oxide, holmium oxide, ytterbium oxide, molybdenum oxide, tungsten oxide, antimony oxide, tin oxide, titanium oxide and the like. Among them, copper oxide, nickel oxide, cobalt oxide, molybdenum oxide, tungsten oxide, iron oxide, tin oxide, zinc oxide and chromium oxide are preferred, and CuO, CoO, NiO, Ni_2O_3, MoO_3, Cr_2O_3, TiO_2, SnO, ZnO and Fe_2O_3 are particularly preferred.

Col. 5, lines 32-42. Therefore, the supposed clarification by the Examiner during the Examiner Interview perpetuates the error and provides no more motivation to combine *Yoshida* with *Matsuda* than the admitted typographical error contained in the Office Action.

In fact, none of the substances used to make the "ceramic whiskers or fibers" of *Matsuda* are disclosed in *Yoshida*, and none of the substances used to make the "burning catalyst" in *Yoshida* are disclosed in *Matsuda*. They appear to be mutually exclusive sets. Not only that, they serve entirely different functions (*i.e.*, the ceramic whisker or fiber of *Matsuda* is used to scavenge "solid residue" whereas the burning catalyst of *Yoshida* is used to reduce the burning temperature). Because of this, there would have been no motivation to combine *Matsuda* with *Yoshida*, let alone to obtain a propellant composition containing the slag trap recited in claims 1 and 22 (*i.e.*, a slag trap that is "at least one of Al_2O_3, TiO_2, or ZrO_2 particles formed by a gas phase reaction").

Third, notwithstanding views to the contrary expressed by the Examiner during the Examiner Interview, the function of the "ceramic whisker or fiber" of *Matsuda* has nothing to do with the function of the "burning catalyst" disclosed in *Yoshida*. According to *Yoshida*, "[t]he burning catalyst is considered to serve mainly to decrease the burning temperature and reduce the concentrations of CO and/or NOx in the gas." *Id.* at col. 5, lines 24-26. In contrast, the purpose of the ceramic whisker or fiber of *Matsuda*, though not altogether clear, seems to be for the purpose of "scavenging". *See* Matsuda, col. 2, line 61. When Appellants' representative tried to explain the difference between a "scavenger" and "catalyst" during the Examiner Interview, the Examiner responded by claiming she could see no difference between the two.

It is clear that the terms "scavenge" and "scavenger" mean something quite different than "catalyze" and "catalyst". According to THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1160 (1981) (a copy of which is attached as Exhibit A), the word "scavenge" means: "1. To collect and remove refuse from; clean up."; "5. *Metallurgy.* To clean (molten metal) by chemically removing impurities". The word "scavenger" similarly means: "3. *Chemistry.* A substance added to a mixture to remove impurities or to counteract the undesirable effects of other constituents". *Id.* Thus, "scavenge" and "scavenger" refer to a process or substance that physically collects or gathers something. A scavenger has a finite ability to scavenge (*i.e.*, like a sponge, once full or spent it can no longer scavenge).

In contrast, the word "catalyze" means "[t]o modify the rate of (a chemical reaction) as a catalyst". THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 211 (1981) (a copy of which is attached as Exhibit B). The word "catalyst" similarly means: "1. *Chemistry.* A substance, usually present in small amounts relative to the reactants, that modifies, especially increases, the rate of a chemical reaction without being consumed in the process." *Id.* Thus, "catalyze" and "catalyst" refer to a process or substance that increases the rate of a chemical reaction without itself being consumed. The nature of a catalyst is that it promotes a chemical reaction; it does not scavenge, collect or bind impurities. In fact, the ability of a catalyst to catalyze a reaction is theoretically infinite. In contrast, the ability of a scavenger to scavenge is finite. In view of the foregoing, the Examiner's view that "scavenging" and "catalysis" mean essentially the same thing is clearly erroneous.

In view of the foregoing, Appellants submit that the Office Action fails to articulate any valid motivation for combining *Matsuda* and *Yoshida*. For at least this reason, the Office Action fails to state a *prima facie* obviousness rejection of claims 1-4 and 9-22 over *Matsuda* and *Yoshida*. See MPEP § 2143.

2. *The Alleged Motivation for Combining Yamato and Yoshida is Illogical and Incomplete*

Yamato is even more deficient than *Matsuda* with respect to the claimed slag trap particles because, unlike the ceramic whisker of fiber *Matsuda*, the *Yamato* composition does not include any component that can arguably scavenge slag. For this reason, there is a clear gap in the Examiner's reasoning. It's as if the Examiner were relying on the same erroneous argument made with respect to *Matsuda* and *Yoshida*, except that the Office Action, through slight of hand, conveniently fails to even mention *Matsuda* in this rejection or identify any component in *Yamato* that is arguably similar to the "burning catalyst" of *Yoshida*. In fact, the alleged motivation for combining *Yamato* and *Yoshida* at page 4 of the Office Action does not even allege that the "burning catalyst" of *Yoshida* provides the same or similar function as any component disclosed in *Yamato*. According to the Office Action,

> It would have been obvious to use the titanium dioxide taught by Yoshida et al with the composition of Yamato since Yoshida suggests that it will function to reduce the concentrations of CO and NOx. Since combustion of the similar composition of Yamato will result in slag formation it would be a benefit to use the titanium oxide teaching to reduce the formation of harmful CO and NOx.

Office Action, page 4. The last sentence is nonsensical.

According to the garbled reasoning of that sentence, one of skill in the art is alleged to have been motivated to "use the titanium oxide" of *Yoshida* because "combustion of" the *Yamato* composition "will result in slag formation", which therefore motivates one to use TiO_2 "to reduce formation of harmful CO and NOx." The alleged motivation for combining *Yamato* with *Yoshida* is therefore illogical on its face because there is no technical relationship between trapping the slag (which is solid or molten) allegedly produced by the *Yamato* composition and using the burning catalyst of *Yoshida* to "decrease the burning temperature and reduce the concentrations of CO and NOx" (which are gases). *See Yoshida*, col. 5, lines 24-26. That *Yoshida* teaches the use of a burning catalyst to reduce the burning temperature of the disclosed

composition provides absolutely no motivation to modify *Yamato* in a manner that would trap slag *(i.e.*, why would the skilled artisan attempt to trap slag using a burn catalyst?)

Moreover, the alleged motivation to combine *Yamato* with *Yoshida* begs the question as to why one of skill in the art would have been motivated to modify *Yamato* to trap the slag allegedly produced by the *Yamato* composition in the first place. Since neither *Yamato* nor *Yoshida* state anything with respect to slag formation, let alone that it might be desirable or beneficial to trap slag, the combined teachings of these two references provide no motivation or suggestion to solve this apparently unknown problem.

Though *Matsuda* discloses the use of ceramic fibers or whiskers to provide a "scavenging effect", thereby arguably providing the motivation to scavenge slag, this teaching does not suggest to the skilled artisan the desirability of adding the burning catalyst of *Yoshida* to the composition of *Yamato*. At best, it may have motivated the skilled artisan to include the ceramic fibers or whiskers of *Matsuda*. However, the Office Action admits that *Matsuda* fails to disclose a propellant composition comprising slag trap particles in combination with a fuel and oxidizing agent (otherwise, the claims would have been rejected as anticipated by *Matsuda*).

In view of the foregoing, Appellants submit that the Office Action fails to articulate any valid motivation for combining *Yamato* and *Yoshida*. For at least this reason, the Office Action fails to state a *prima facia* obviousness rejection of claims 1-4 and 9-22 over *Yamato* and *Yoshida*.

B. The Office Action Fails to Show That the Combined Teachings of the Applied Art Teach or Suggest Every Claim Limitation

1. Claims 1-4 and 10-21

Claims 1-4 and 10-21 recite the inclusion of slag trap "particles formed by a gas phase reaction". The advantage of such particles in trapping slag over particles formed by a wet

process is clearly explained in the description of the invention. Application, p. 10, *l.* 15 – p. 11, *l.* 14. As discussed in previous amendments, the ceramic whiskers or fibers of *Matsuda* are not "formed by a gas phase reaction". Moreover, the Office Action fails to even allege that any of *Matsuda*, *Yamato* or *Yoshida* teach or suggest the use of slag trap "particles formed by a gas phase reaction", as recited in claims 1 and 22.

Rather than showing where the cited art teaches or suggests the use of "particles formed by a gas phase reaction", the Office Action argues that the burning catalyst particles of *Yoshida* inherently do the same thing as the claimed slag trap particles. Office Action, page 5. Whether true or not, that assertion entirely misses the point. It is not enough for an Examiner to simply allege that one or more of the recited elements inherently behave, or perform the same or similar function, as allegedly similar elements taught in the cited art. In order for there to be *prima facie* obviousness, "the prior art reference (or references when combined) must teach or suggest all the claim limitations". MPEP § 2143 (emphasis added). The Office Action fails to make this required showing.

In short, Appellants submit that the Office Action has failed to show where *Matsuda*, *Yamato* and *Yoshida* "teach or suggest all the claim limitations" as required by MPEP § 2143. For this additional reason, the Office Action fails to state a *prima facie* obviousness rejection of claims 1-4 and 10-21 over either *Matsuda* and *Yoshida* or *Yamato* and *Yoshida*. *See id.*

2. Claims 9 and 22

Claims 9 and 22, like claims 1-4 and 10-21 argued above, also recite "slag trap particles" that are "formed by a gas phase reaction". Moreover, claims 9 and 22 further require such "slag trap particles" to also be "highly dispersed". The advantage of such particles in trapping slag over particles formed by a wet process is clearly explained in the description of the invention. Application, p. 10, *l.* 15 – p. 11, *l.* 14. As discussed in previous amendments, the ceramic

whiskers or fibers of *Matsuda* are neither "formed by a gas phase reaction" nor are they "highly dispersed" (*i.e.*, have "a large inner surface" as a result of having "highly resolved lattices"). Moreover, the Office Action fails to even allege that any of *Matsuda*, *Yamato* or *Yoshida* teach or suggest the use of slag trap "particles formed by a gas phase reaction" that are also "highly dispersed", as recited in claims 9 and 22.

Rather than showing where the cited art teaches or suggests the use of "particles formed by a gas phase reaction" that are also "highly dispersed", the Office Action argues that the burning catalyst particles of *Yoshida* inherently do the same thing as the claimed slag trap particles of claims 9 and 22. Office Action, page 5. Whether true or not, that assertion entirely misses the point. It is not enough for an Examiner to simply allege that one or more of the recited elements inherently behave, or perform the same or similar function, as allegedly similar elements taught in the cited art. In order for there to be *prima facie* obviousness, "the prior art reference (or references when combined) must teach or suggest all the claim limitations". MPEP § 2143 (emphasis added). The Office Action fails to make this required showing.

In short, Appellants submit that the Office Action has failed to show where *Matsuda*, *Yamato* and *Yoshida* "teach or suggest all the claim limitations" as required by MPEP § 2143. For this additional reason, the Office Action fails to state a *prima facie* obviousness rejection of claims 9 and 21 over either *Matsuda* and *Yoshida* or *Yamato* and *Yoshida*. *See id.*

C. The Office Action Fails to Show Where the Prior Art Provides a Reasonable Expectation of Success

The purpose of the slag trap particles recited in claims 1-4 and 9-22 is to trap slag that is generated during combustion of the claimed propellant composition in order to facilitate the removal of slag by filtration. The Office Action assumes, without citing to any teaching in the art, that combining the primary references with *Yoshida* would inherently yield a composition

capable of trapping slag produced during burning of a gas generating propellant composition. *See* Office Action, pp. 5-6. In support of this notion, the Office Action insinuates, without providing any evidence, that the current application merely calls the elements disclosed in the cited art by a different name. *Id.* In particular, the Office Action argues that "Applicant cannot remove the effects of these components merely by calling them by another name". *Id.* at page 5. However, that statement begs the question as to whether the components disclosed in the cited art would, in fact, be reasonably expected to succeed in removing slag from a burning propellant composition based on teachings found in the prior art. That the "burning catalyst" of *Yoshida* might reasonably be expected to reduce the "burning temperature" and "the concentrations of CO and/or NOx" provides no basis, likelihood or expectation that it would also be able to trap slag produced by a propellant composition during combustion.[1]

It appears that the Examiner's subjective belief that the burning catalyst of *Yoshida* acts as a slag trap was derived from the present application, not any identifiable teaching found in the art. However, the MPEP makes it crystal clear that the reasonable expectation of success "must . . . be found in the prior art, not in applicant's disclosure". MPEP § 2143 (emphasis added) (citing *In re* Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). For this yet this additional reason, Appellants submit that the Office Action fails to state a *prima facia* obviousness rejection of claims 1-4 and 9-22 over either *Matsuda* and *Yoshida* or *Yamato* and *Yoshida*. See MPEP § 2143.

V. THE OFFICE ACTION MISCHARACTERIZES THE CLAIMS AT ISSUE, THEREBY EVIDENCING THAT THE EXAMINER FAILED TO CONSIDER ALL THE CLAIM ELEMENTS

When responding to the arguments set forth in Amendment "C" and Response regarding the claimed slag trap particles, the Office Action denied that the claims require "particles":

[1] Even if it could be shown that slag trap particles can also act as a burning catalyst, that alone would not prove the converse (*i.e.*, that the burning catalyst of *Yoshida* also acts as a slag trap).

"applicant's claims do not require a particle, the claims only require a certain surface area". Office Action, p. 4 (emphasis added). This statement by the Examiner is clearly erroneous because claims 1 and 22 each recite "particles formed by a gas phase reaction" (emphasis added). Because the rejections of Appellants' claims and arguments were based on a clearly erroneous assumption on the part of the Examiner (*i.e.*, that the "claims do not require a particle"), this is further evidence that the Examiner failed to consider all of the claim elements when comparing the claims to the cited art, in violation of MPEP § 2143. This failure on the part of the Examiner to consider the word "particles" when determining the scope of the claims is consistent with the Examiner's failure consider other important terms found in the claims (*i.e.*, particles "formed by a gas phase reaction" and/or particles that are "highly dispersed").

VI. THE OFFICE ACTION FAILS TO SUPPORT ITS INHERENCY ARGUMENTS WITH ANY EVIDENCE BUT APPEARS TO RELY SOLELY ON HINDSIGHT

When rejecting the arguments set forth in Amendment "C" and Response, the Office Action expressed the opinion that the burning catalyst of *Yoshida* would inherently act to trap slag. Office Action, pp. 5-6. However, simply alleging that a substance inherently performs a function without providing supporting evidence is improper. According to MPEP § 2112,

> **EXAMINER MUST PROVIDE RATIONALE OR EVIDENCE TENDING TO SHOW INHERENCY**
>
> The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) (The claims were drawn to a disposable diaper having three fastening elements. The reference disclosed two fastening elements that could perform the same function as the three fastening elements in the claims. The court construed the

claims to require three separate elements and held that the reference did not disclose a separate third fastening element, either expressly or inherently.).

"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original) (Applicant's invention was directed to a biaxially oriented, flexible dilation catheter balloon (a tube which expands upon inflation) used, for example, in clearing the blood vessels of heart patients). The examiner applied a U.S. patent to Schjeldahl which disclosed injection molding a tubular preform and then injecting air into the preform to expand it against a mold (blow molding). The reference did not directly state that the end product balloon was biaxially oriented. It did disclose that the balloon was "formed from a thin flexible inelastic, high tensile strength, biaxially oriented synthetic plastic material." *Id.* at 1462 (emphasis in original). The examiner argued that Schjeldahl's balloon was inherently biaxially oriented. The Board reversed on the basis that the examiner did not provide objective evidence or cogent technical reasoning to support the conclusion of inherency.).

In the present case, the Examiner relied on the unsupported assertion that the "burning catalyst" of *Yoshida* inherently functions as a "slag trap" within the meaning of this term, as defined and claimed in the present application. Office Action, pp. 5-6. When asked by Appellants' representative during the Examiner Interview how the Examiner knew this, the Examiner simply replied that "that's what they [titanium particles] do" even though none of the art relied upon in the Office Action teaches or suggests this concept. According to MPEP § 2112 the PTO has therefore failed to meet its burden of showing that the "burning catalyst" of *Yoshida* inherently behaves as a slag trap. The flippant statement in the Office Action that "the Applicant appears to argue that he has somehow changed titanium oxide to make it work differently than it does for everyone else" can't erase the failure on the part of the Examiner to provide any "objective evidence or cogent technical reasoning" that the burning catalyst of *Yoshida* inherently constitutes a "slag trap" as defined in claims 1-4 and 9-22, as required by MPEP § 2112.

Moreover, it has never been Appellants' position that they somehow discovered how to make the burning catalyst of *Yoshida* "work differently than it does for everyone else". Instead,

the present Application discloses and claims slag trap particles that are "formed by a gas phase reaction" in order for the particles to behave differently than particles formed in other ways (*e.g.*, by a wet process). Application, p. 9, *ll.* 21-30. In other words, Appellants discovered that using different particles yields different results. The differences described in the Application between slag trap particles formed by a gas phase reaction and particles formed in other ways (*e.g.*, by a wet process) is sufficient, in any event, to rebut any allegation of inherency. Since this evidence remains unrebutted (the Office Action merely stating an unsupported opinion), there is no basis for a finding that the burning catalyst of *Yoshida* is inherently the same as the claimed slag trap particles.

In any event, claims 1-4 and 9-22 not only claim particles capable of trapping slag during combustion of the claimed composition, they also require slag trap particles "formed by a gas phase reaction" (claims 1-4 and 10-21) and/or that are "highly dispersed" (claims 9 and 22). Claims 1-4 and 9-22 do not purport to encompass any other type of particles. Nor have Appellants ever argued that they do. Mocking the Appellants for allegedly claiming to have changed the nature of the burning catalyst of *Yoshida* is a naked attempt by the Examiner to shift the attention away from the Examiner's own failure to provide any shred of evidence in support of her contention that the burning catalyst of *Yoshida* inherently acts as a "slag trap". This ruse also does not offset the glaring failure of the Office Action to provide any evidence that the burning catalyst of *Yoshida* is "formed by a gas phase reaction", or comprises particles that are "highly dispersed". As stated above, MPEP § 2112 requires more than mere assertions or possibilities when alleging inherency. It requires "objective evidence" and "cogent technical reasoning to support the conclusion of inherency". The Office Action has provided neither.

Moreover, the allegation that the "burning catalyst" of *Yoshida* would successfully trap slag appears to be based entirely on hindsight, using the present application as a template to

piece together disparate and unrelated teachings in the cited art. The only teaching in the record for the proposition that titanium dioxide particles having a specific surface area of at least about 40 m^2/g are good at trapping slag is found in the present Application. It is well-established that hindsight analysis is not a legitimate basis for rejecting claims.

Finally, in the context of obviousness, inherency is largely immaterial. The CCPA clearly stated that

> [t]he inherency of an advantage and its obviousness are entirely different questions. That which may be inherent is not necessarily known. Obviousness cannot be predicated on what is unknown.

In re Shetty, 566 F.2d 81, 86, 195 USPQ 753, 756-57 (CCPA 1977) (emphasis added) (quoting *In re Spormann*, 363 F.2d 444, 448, 150 USPQ 449, 452 (CCPA 1966)); *See also In re Naylor*, 369 F.2d 765, 768, 152 USPQ 106, 108 (CCPA 1966) ("[Inherency] is quite immaterial if . . . one of ordinary skill in the art would not appreciate or recognize the inherent result"); *In re Rijckaert*, 9 F.3d 1531, 1533, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

In the present case, the Office Action argues that including titanium dioxide would inherently act as a slag trap, but since the prior art does not recognize that the burning catalyst of *Yoshida* might also be a slag trap, the position of the Office Action begs the question as to why one of skill in the art would have been motivated in the first place to make the alleged modification of the primary references to include the burning catalyst of *Yoshida*. The entire rejection appears to rest on (1) hindsight as the sole motivation to combine the primary and secondary references and (2) an unsupported assertion of inherency, based either on hindsight or pure conjecture, as the sole justification as to why the combination and alleged modification makes any sense.

VII. CLAIMS 1-4 AND 9-22 ARE NOT PRIMA FACIA OBVIOUS OVER THE COMBINATION OF *MATSUDA* OR *YAMATO* AND *YOSHIDA*

In addition to the factually inaccurate and legally unjustifiable rejections set forth in the Office Action, claims 1-4 and 9-22 are, in fact, unobvious over the cited art. As stated above, *Matsuda* neither teaches nor suggests the use of slag trap particles. In fact, *Matsuda* appears to teach away from the use of particles by arguing that ceramic whiskers or fibers are superior to particles with respect to their respective "scavenging effect[s]": "A whisker or fiber is short in a length and small in an aspect ratio, and a particulate one is notably reduced in a scavenging effect of a solid residue since it is not arranged in a steric network form." *Matsuda*, col. 2, lines 59-63 (emphasis added). Such scavenging of the "solid residue" is evidently the result of the whisker or fiber being "arranged in a steric network form", unlike "a particulate one", which is not so arranged. *See id.* Moreover, because *Matsuda* expressly teaches that particles are "not arranged in a steric network form" (col. 2, lines 59-63), one of skill in the art clearly would not have been motivated to substitute the ceramic whisker or fiber of *Matsuda* with the burning catalyst particles of *Yoshida*. *See W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984) (A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention).

Yamato is even further removed from the claims of the present invention because it neither teaches nor suggests any component that can even remotely be considered to be a slag trap. The only document that teaches that particles, when properly selected, can act as a slag trap is the present application, which is not available for purposes of establishing the necessary motivation to combine.

Nor can any reasonable expectation of success be found in the prior art. The only document that teaches that high surface area particles might, when properly selected, act to trap slag is the present application, which is not available for purposes of showing reasonable expectation of success.

A. Claims 1-4 and 10-21

Finally, the combined teachings of *Matsuda* and *Yoshida* or *Yamato* and *Yoshida* fail to teach or suggest every limitation found in claims 1-4 and 10-21 (*e.g.*, "slag trap . . . particles formed by a gas phase reaction"). Claims 1-4 and 10-21 are not only limited to particles that have a specific surface area, but to particles formed in a certain manner (*i.e.*, by a gas phase reaction) that renders them suitable for use as a slag trap. Particles that do not act as a slag trap, even particles having a high specific surface area within the claimed parameters but, *e.g.*, formed by a "wet process", do not meet the "slag trap . . . particles" limitation of claims 1-4 and 10-21.

In short, none of the applied art teaches or suggests how to select particles, from among the universe of particles, that would be suitable as a slag trap. Moreover, the applied art does not even recognize the importance of trapping slag using slag trap particles, or that failing to trap slag formed during combustion or a propellant is a problem that needs a solution. For that reason, the applied art provides no teaching or suggestion that would have motivated one of skill in the art to modify *Matsuda* or *Yamato* to include "slag trap . . . particles" of any kind, let alone slag trap particles having the specific characteristics recited in claims 1-4 and 10-21.

B. Claims 9 and 22

The combined teachings of *Matsuda* and *Yoshida* or *Yamato* and *Yoshida* likewise fail to teach or suggest every limitation found in claims 9 and 22 (*e.g.*, "slag trap . . . particles formed by a gas phase reaction" that are also "highly dispersed"). Claims 9 and 22 are not only limited to particles that have a specific surface area, but to particles formed in a certain manner (*i.e.*, by a

gas phase reaction so as to also be "highly dispersed") that renders them suitable for use as a slag trap. Particles that do not act as a slag trap, even particles having a high specific surface area within the claimed parameters but, *e.g.*, formed by a "wet process", do not meet the "slag trap particles" limitation of claims 9 and 22.

In short, none of the applied art teaches or suggests how to select particles, from among the universe of particles, that would be suitable as a slag trap. Moreover, the applied art does not even recognize the importance of trapping slag using slag trap particles, or that failing to trap slag formed during combustion or a propellant is a problem that needs a solution. For that reason, the applied art provides no teaching or suggestion that would have motivated one of skill in the art to modify *Matsuda* or *Yamato* to include "slag trap . . . particles" of any kind, let alone slag trap particles having the specific characteristics recited in claims 9 and 22.

VIII. CLAIMS 1-4 AND 9-22 CLAIM A COMPOSITION THAT HAS UNEXPECTED RESULTS RELATIVE TO THE APPLIED ART

Even assuming *arguendo* that claims 1-4 and 9-22 are *prima facie* obvious over the applied art, a point which Appellants in no wise concede, Appellants can rebut *prima facie* obviousness based on the secondary consideration of unexpected results. According to MPEP § 716.02(a),

> Presence of a property not possessed by the prior art is evidence of nonobviousness. *In re Papesch*, 315 F.2d 381, 137 USPQ 43 (CCPA 1963) (rejection of claims to compound structurally similar to the prior art compound was reversed because claimed compound unexpectedly possessed anti-inflammatory properties not possessed by the prior art compound). . . .

In the present case, claims 1-4 and 9-22 claim a propellant that includes "slag trap . . . particles", which, according to evidence set forth in the application, are capable of acting as an "internal filter" that traps slag. *See* Application, p. 1, *ll.* 6-12; p. 10, *l.* 15 – p. 11, *l.* 14. This is an unexpected result in view of any teaching found in the prior art. While it may have been

known that certain types of particles help catalyze combustion of propellant compositions (*e.g.*, so as to reduce burning temperature and reduce concentrations of CO and NOx, as taught in *Yoshida*), it was unknown that particles "formed by a gas phase reaction" and/or that are "highly dispersed" are capable of trapping slag. That is further evidence that the claims are unobvious over the applied art.

PRAYER FOR RELIEF

In view of the foregoing, Appellants respectfully request the Board to vacate the final rejection and order the Examiner to allow each of the claims on appeal.

CLAIMS APPENDIX

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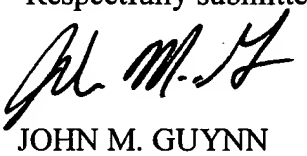
EVIDENCE APPENDIX

None. No evidence under 37 C.F.R. §§ 1.130-1.132 is being submitted, nor was any extrinsic evidence relied upon by the Examiner in rejecting the claims.

Dated this 27th day of January 2005.

Respectfully submitted,



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CLAIM APPENDIX

CLAIMS APPENDIX

1. (Previously Presented) Propellant for gas generators, comprising

(a) at least one fuel selected from the group consisting of guanidine nitrate, dicyanamide, ammonium dicyanamide, sodium dicyanamide, copper dicyanamide, tin dicyanamide, calcium dicyanamide, guanidine dicyanamide, aminoguanidine bicarbonate, aminoguanidine nitrate, triaminoguanidine nitrate, nitroguanidine, dicyandiamide, azodicarbonamide, tetrazole, 5-aminotetrazole, 5-nitro-1,2,4-triazole-3-on, salts and mixtures thereof;

(b) at least one of an alkali metal nitrate, an alkaline earth metal nitrate, ammonium nitrate, an alkali metal chlorate, an alkaline earth metal chlorate, ammonium chlorate, an alkali metal perchlorate, an alkaline earth metal chlorate, or ammonium perchlorate, and

(c) at least one essentially chemically-inert slag trap with a high fusion point, said slag trap being at least one of Al_2O_3, TiO_2, or ZrO_2 particles formed by a gas phase reaction so as to have a specific surface area of at least about 40 m^2g.

2. (Previously Presented) Propellant for gas generators according to claim 1, wherein component (a) is present in an amount of about 20 to 60 wt.-%, component (b) is present in an amount of about 38 to about 63 wt.-%, and component (c) is present in an amount of about 5 to 22 wt.-%.

3. (Previously Presented) Propellant for gas generators according to claim 1, wherein component (a) is selected from the group consisting of nitroguanidine, 5-aminotetrazole, dicyandiamide, dicyanamide, sodium- and calcium dicyanamide, guanidine nitrate, and mixtures thereof.

4. (Previously Presented) Propellant for gas generators according to claim 1, wherein component (b) is selected from the group consisting of sodium-, potassium- and strontium nitrate.

5. (Previously Presented) Propellant for gas generators according to claim 1, wherein a portion of the particles comprising component (c) include a layer of platinum metal or a metal alloy of platinum metals or copper in a catalytically effective thickness.

6. (Previously Presented) Propellant for gas generators according to claim 5, wherein the platinum metal is selected from ruthenium, osmium, rhodium, iridium, palladium and platinum.

7. (Previously Presented) Propellant for gas generators according to claim 5, wherein the metal alloy of platinum metals is at least one of a Pt/Pd alloy or a Pt/Rh alloy.

8. (Previously Presented) Propellant for gas generators according to claim 5, wherein the weight portion of the catalyst with respect to component (c) is 0.1 to 5 wt.-%.

9. (Previously Presented) Propellant for gas generators according to claim 1, wherein component (a) is nitroguanidine, component (b) is strontium nitrate and component (c) is highly dispersed Al_2O_3, TiO_2 or ZrO_2.

10. (Original) Propellant for gas generators according to claim 9, wherein component (a) is present in an amount of 45 to 51 wt.-%, components (b) is present in an amount of 39 to 45 wt.-% and component (c) is present in an amount of 9 to 11 wt.-%, with respect to the total composition.

11. (Previously Presented) Propellant for gas generators according to claim 1, further including a component (d) that is at least one slag former selected from the group consisting of alkali metal carbonates, alkaline earth metal carbonates, alkali metal oxides, alkaline earth metal oxides, silicates, aluminates, aluminum silicates, silicon nitride and iron(III)oxide.

12. (Previously Presented) Propellant for gas generators according to claim 11, wherein component (d) is present in an amount of about 2 to 12 wt.-%.

13. (Previously Presented) Propellant for gas generators according to claim 1, further including a component (e) that is at least one binder being soluble in water at room temperature.

14. (Previously Presented) Propellant for gas generators according to claim 1, further including a component (e) that is at least one binder selected from the group consisting of cellulose compounds, polymers of one or more polymerizable olefinic unsaturated monomers, a metal salt of stearic acid being insoluble in water at room temperature and graphite.

15. (Previously Presented) Propellant for gas generators according to claim 14, wherein the binder is present in an amount of 0 to 2 wt.-%.

16. (Previously Presented) Propellant for gas generators according to claim 1, wherein the propellant is suitable for use as at least one of a gas-generating agent in airbags, an extinguishing agent or a propellant.

17. (Previously Presented) Propellant for gas generators according to claim 1, wherein component (a) is present in an amount of about 28 to 52 wt.-%, component (b) is present in an amount of about 38 to about 55 wt.-%, and component (c) is present in an amount of about 8 to 20 wt.-%.

18. (Previously Presented) Propellant for gas generators according to claim 1, wherein component (a) is present in an amount of about 45 to 51 wt.-%, component (b) is present in an amount of about 39 to about 45 wt.-%, and component (c) is present in an amount of about 9 to 11 wt.-%.

19. (Previously Presented) Propellant for gas generators according to claim 5, wherein the weight portion of the catalyst with respect to component (c) is 0.2 to 1.2 wt.-%.

20. (Previously Presented) Propellant for gas generators according to claim 11, wherein component (d) is present in an amount of about 4 to 10 wt.-%.

21. (Previously Presented) Propellant for gas generators according to claim 14, wherein the binder is present in an amount of 0.3 to 0.8 wt.-%.

22. (Previously Presented) Propellant for gas generators, comprising

(a) at least one fuel selected from the group consisting of guanidine nitrate, dicyanamide, ammonium dicyanamide, sodium dicyanamide, copper dicyanamide, tin dicyanamide, calcium dicyanamide, guanidine dicyanamide, aminoguanidine bicarbonate, aminoguanidine nitrate, triaminoguanidine nitrate, nitroguanidine, dicyandiamide, azodicarbonamide, tetrazole, 5-aminotetrazole, 5-nitro-1,2,4-triazole-3-on, salts and mixtures thereof;

(b) at least one of an alkali metal nitrate, an alkaline earth metal nitrate, ammonium nitrate, an alkali metal chlorate, an alkaline earth metal chlorate, ammonium chlorate, an alkali metal perchlorate, an alkaline earth metal chlorate, or ammonium perchlorate, and

(c) at least one essentially chemically-inert slag trap with a high fusion point, said slag trap being at least one of highly dispersed Al_2O_3, TiO_2, or ZrO_2 particles formed by a gas phase reaction so as to have a specific surface area of at least about 40 m^2g.

23. (Previously Presented) Propellant for gas generators, comprising

(a) at least one fuel selected from the group consisting of guanidine nitrate, dicyanamide, ammonium dicyanamide, sodium dicyanamide, copper dicyanamide, tin dicyanamide, calcium dicyanamide, guanidine dicyanamide, aminoguanidine bicarbonate, aminoguanidine nitrate, triaminoguanidine nitrate, nitroguanidine, dicyandiamide, azodicarbonamide, tetrazole, 5-aminotetrazole, 5-nitro-1,2,4-triazole-3-on, salts and mixtures thereof;

(b) at least one of an alkali metal nitrate, an alkaline earth metal nitrate, ammonium nitrate, an alkali metal chlorate, an alkaline earth metal chlorate, ammonium chlorate, an alkali metal perchlorate, an alkaline earth metal chlorate, or ammonium perchlorate, and

(c) at least one essentially chemically-inert slag trap with a high fusion point, said slag trap being at least one of highly dispersed Al_2O_3, TiO_2, or ZrO_2 particles formed by a gas phase reaction so as to have a specific surface area of at least about 40 m^2g, wherein a portion of the particles include a layer of platinum metal or a metal alloy of platinum metals or copper in a catalytic effective thickness.

EVIDENCE APPENDIX

(NONE)